HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

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WRIT APPEAL No.867 of 2006

Between:

Master Y.Ajay Rayudu

… Appellant

AND

The Hyderabad Urban Development Authority,
Hyderabad rep by its Vice Chairman
& 2 others.

… Respondents

;: J U D G M E N T ::

Counsel for the appellant : Shri O.Manohar Reddy

Counsel for respondent Nos.2 & 3 : Shri P.Rajagopal Rao

Dated: 06.02.2007

Per C.V.NAGARJUNA REDDY, J.

This writ appeal is filed against the order dated 27.7.2006 passed by the learned Single Judge in W.P.No.13987 of 2006 whereby he declined to interfere with the proceedings initiated by the respondents under the Land Acquisition Act 1894 (for short 'the Act') and the award passed in respect of the land admeasuring Ac.1.03 guntas in survey No.87/1 of Nanakramguda village, Serilingampally mandal, Ranga Reddy district.

The appellant is a minor. He filed W.P.No.13987 of 2006 through his next friend Smt.Y.Sailaja being his mother and natural guardian questioning acquisition of the land described hereinabove for the purpose of construction of the Outer Ring Road.

In the affidavit filed by her, Smt. Sailaja, averred as under:

i) that the father of the appellant purchased an extent of Ac.0.23 guntas of land in survey No.87/1 of Nanakramguda village, Serilingampally Mandal, Ranga Reddy district under registered sale deed No.4041 of 1997 dated 12.6.1997 and the brother of his father Y.V.Diwakar purchased an extent of Ac.0.20 guntas of land in the same survey number under a separate registered sale deed on the same day;

ii) that the father and the paternal uncle of the

appellant executed two registered gift deeds bearing Nos.4952 of 1998 dated 27.1.1998 and 8932 of 2001 dated 3.10.2001 in favour of the appellant, transferring all the rights over the said two parcels of the land in his favour;

iii) that a house was constructed on a portion of the land admeasuring 330 square yards, the same was assigned door No.2-38/1/A/1;

iv) that the appellant was given pattedar pass book by the Mandal Revenue Officer and his name was mutated in the revenue records.

v) that when the respondents tried to demolish the compound, Writ Petition No. 1356 of 2006 was filed in this Court, which was disposed of by the learned Single Judge on 27.1.2006 with a direction to the respondents not to demolish the property of the appellant or to dispossess him without following due process of law;

vi) that after decision of the writ petition, respondent No. 3 issued notification under Section 4 (1) of the Act, which was published in Indian Express daily on 4.3.2006 for acquisition of the land measuring Ac.1.09 guntas in survey No.87/1 for a public purpose, namely, construction of Outer Ring Road;

vii) that enquiry under section 5-A of the Act was dispensed with by invoking the urgency clause

contained in Section 17(4) of the Act;

viii) that the declaration under Section 6 of the Act was published in the New Indian Express daily on 9.3.2006; and

ix) the land acquisition Collector passed ex parte award on 19.5.2006.

The appellant sought invalidation of the acquisition proceedings on the following grounds;

a) That initially the Outer Ring Road was proposed to be formed through Nanakramguda village but the alignment was changed thrice with a view to favour those having close connection with the people in power.

b) That the land of other similarly situated persons comprising survey Nos. 80, 85, 86 and 87 (part) were released on 8.3.2006.

c) That respondent No. 3 does not have the power, jurisdiction or authority to issue notifications under Section 4 (1) and 6 because the power of acquisition has not been delegated to him.

d) That even assuming that the third respondent is delegated with the powers to issue a notification under Section 4(1) of the Act and the declaration under Section 6 of the Act, he had no power to delegate his powers to

respondent No.2.

e) That dispensing with an enquiry under Section 5-A of the Act which is a valuable right conferred on the owners of the property is wholly illegal and that there was no material which lends justification to invoke the urgency clause under Section 17(4) of the Act.

The Special Deputy Collector, L.A.Unit-V, Outer Ring Road Project, HUDA, respondent No.2, filed counter affidavit to justify the acquisition of land in question by invoking urgency clause contained in Section 17 of the Act. He averred that enquiry under Section 5-A of the Act was dispensed with because the land was urgently required. He further averred that ex parte award was passed because the notice issued by the land acquisition Collector was refused by the watchman posted at the premises.

The learned Single Judge held that it is not apparent to the Court that the current alignment is *per se* irrational or constitutes a deviation on the basis of which it would be compelling to presume that the alignment was being altered for the purpose of harming the appellant and without a just public cause. The learned Judge further held that since the enquiry under Section 5-A of the Act was dispensed with and the award was made on 19.5.2006 and the possession was also said to have been taken by the respondents on 10.7.2006, the validity of the notification under Section 4(1) of the Act cannot be assailed in view of the judgment of the Supreme Court in **M/s.Larsen and Toubro Ltd., Vs. State of Gujarat and**

others[1]**.** The learned Judge also held that the appellant failed to establish the allegations of mala fides made by him.

We have heard the learned counsel for the parties and perused the record.

A reading of the order under challenge shows that the learned Single Judge did not examine the allegations made by the appellant in detail and declined relief to him by assuming that the change of alignment has not harmed his cause. The reason for this appears to be that the learned Judge was of the view that the judgment of the Supreme Court in **M/s.Larsen and Toubro** disentitles the appellant to challenge the proceedings initiated under the Act after the award is made.

We have carefully gone through the above noted judgment. The facts of that case were that different parcels of lands were acquired under separate notifications issued under Section 4(1) of the Act for the benefit of M/s. Larsen and Toubro Limited. Notification covered by Civil Appeal No.1568 of 1987 was set aside by the Gujarat High Court on the ground that there was non-compliance of the provisions of Rules 3 and 4 of the Land Acquisition (Companies) Rules 1963 and the notification impugned in Civil Appeal No.5149 of 1989 was set aside not only on the aforementioned ground but also on the ground that the owners of the land were not served with the notice under Section 9 of the Act before passing the award. The beneficiary under the notification, viz., Larsen and Toubro Limited also filed Civil Appeal against common judgment of the Gujarat High Court which rejected its challenge to withdrawal of certain parcels of the land and the

Supreme Court reversed the judgment of the Gujarat High Court in respect of notifications covered by Civil Appeal Nos.1568 of 1987 and 5149 of 1989. In Civil Appeal No.5149 of 1989 wherein the award was set aside on the ground of non-compliance of the provisions of Section 9 of the Act, namely, non-service of notices on the parties, notification under Section 4 was issued on 23.1.1986, declaration under Section 6 was made on 19.2.1987, notices under Section 9 were issued on 27.1.1989, possession of the land was taken over on 5.7.1989 and the writ petition was filed on 19.7.1989. The Supreme Court in the backdrop of the aforementioned facts held in para-21 as under:

> "This Court has repeatedly held that writ petition challenging the notification issued under Sections 4 and 6 of the Act is liable to be dismissed on the ground of delay and laches if challenge is not made within a reasonable time. This Court has said that the petitioner cannot sit on the fence and allow the State to complete the acquisition proceedings on the basis that notification under Section 4 and the declaration under Section 6 were valid and then to attack the notifications on the grounds which were available to him at the time when these were published as otherwise it would be putting premium on dilatory tactics. Writ Petition (SCA 5149/89) is thus barred by laches as well."

In our considered view, the observations contained in the above extracted paragraph must be read in the backdrop of the facts of the case and the same cannot be treated as laying down a general proposition of law that once the award is made, the owner of the land cannot challenge the acquisition proceedings. The reason, which seems to have prompted the Supreme Court to

decline relief to the appellant, was that the writ petition was filed after 2 ½ years of the publication of notice issued under Section 4 (1) of the Act.

In the present case, the writ petition was filed on 9.7.2006 i.e., about four months after publication of notification issued under Section 4 (1) of the Act. It is also borne out from the record that notice of award enquiry was not personally served on the appellant. In the counter filed on behalf of respondent No.2, it has been averred that the notice was affixed on the compound wall because the watchman refused to accept the same. It is, therefore, reasonable to presume that the appellant or his family members had no knowledge of either the award enquiry or passing of ex parte award on 19.5.2006.

From what we have noted above, it is clear that the appellant had promptly sought this Court's intervention for invalidation of the acquisition of his land and the learned Single Judge committed an error by non-suiting him by simply relying on the judgment of the Supreme Court in **M/s. Larsen and Toubro**.

In the result, the appeal is allowed, the order of the learned Single Judge is set aside and W.P.No.13987 of 2006 is remitted back to the learned Single Judge for adjudication on merits.

As a sequel to disposal of the writ appeal in the manner indicated above, WA.M.P.No. 1788 of 2006 filed by the appellant is disposed of as infructuous.

C.V. NAGARJUNA REDDY, J.

G.S. SINGHVI, CJ.

Date: 06.02.2007
Mdaa/Es

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[1] AIR 1998 SC 1608